

State of California



Fair Political Practices Commission

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Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
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April 5, 1985

Joseph Camicia
President, Alameda Planning Board
c/o Carter J. Stroud
City Attorney
City Hall
Alameda, CA 94501

Re: Your Request for Advice
Our File No. A-85-061

Dear Mr. Camicia:

Thank you for your request for advice regarding your duties under the conflict of interest provisions of the Political Reform Act.^{1/} This advice is based on the facts provided in a letter from Carter J. Stroud, City Attorney of Alameda, and provided by you in telephone conversations.

FACTS

You are a member of the Alameda Planning Board. The Planning Board is currently considering an application for the rezoning of two parcels of property. One parcel consists of 105 acres, and is currently zoned for residential use with a density of 839 units. The applicant wants to convert that land from residential use to use as a business park. The second parcel consists of 91 acres and is also currently zoned for residential use, with a density of 464 units. The applicant wants to increase the density of the second parcel by 839 units, to a total of 1,303 units.

You are employed by United Cable Television Corporation, a company listed on the New York Stock Exchange. You have stated that United Cable achieves approximately 50 percent penetration of homes in residential areas nationwide and in the Bay Area. This percentage may vary with the average income of the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

residential area, and in a higher income area, such as the area involved in the rezoning application before the Alameda Planning Board, United Cable achieves less than 50 percent penetration.

The cable for the residential areas in question has already been laid. The only remaining step for United Cable is to connect the cable television service to the homes.

United Cable has three basic rates of \$2.95, \$5.95, and \$7.95 per month. The number of available channels increases with the increase in the basic monthly rate. Subscribers may also select up to eight premium services at a monthly cost of \$7.95 per service in addition to the basic rate. The most popular basic rate is the \$7.95 monthly rate, and the average number of premium services selected is two, at \$7.95 each, for a total monthly bill of \$23.85 per home. You have stated that you have access to United Cable's average monthly revenue per home, but United Cable does not want to make that information public. However, you have indicated that the average monthly revenue per home is substantially less than \$40.

QUESTION

Are you required to disqualify yourself from participating in the Alameda Planning Board's decision concerning the rezoning of the two parcels of land in view of the fact that United Cable is a source of income to you?

CONCLUSION

You may participate in the Alameda Planning Board's decision concerning the rezoning of the two parcels of land.

DISCUSSION

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material effect, distinguishable from its effect on the public generally, on:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

You are an employee of United Cable and you receive income from United Cable in excess of \$250 per year; therefore, you must disqualify yourself from participating in any decision of the Alameda Planning Board which could have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on United Cable.

Commission regulation 2 Cal. Adm. Code Section 18702^{2/} provides that the effect of a governmental decision will be considered material if it is significant. The Commission has also adopted monetary guidelines for determining whether the effect of a decision on a business entity which is a source of income to a public official will be considered significant.

^{2/} The Commission is currently considering amendments to this regulation. The amendment would increase the monetary guidelines for determining whether the effect of a decision on a business entity is considered material (see enclosed copy of Notice to adopt 2 Cal. Adm. Code Section 18702.2).

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2 Cal. Adm. Code Section 18702(b)(3)(D). Currently, these guidelines state that for a company the size of United Cable, an increase or decrease in the annualized gross revenues of \$100,000 or more will be considered a material effect on that company. 2 Cal. Adm. Code Section 18702(b)(1)(A). However, on February 13, 1985, the Commission formally authorized the staff to interpret this guideline as being \$200,000 in annualized gross revenues for businesses which are listed on the New York or American Stock Exchanges. United Cable is listed on the New York Stock Exchange. Consequently, the issue is whether it is reasonably foreseeable that the 839 additional homes, if approved by the Alameda Planning Board, would increase, or decrease, the annualized gross revenues of United Cable by at least \$200,000.

If 50 percent of the 839 homes were to subscribe to United Cable's service, each home would have to pay approximately \$477 for United Cable's services each year for United Cable's annualized gross revenues to be affected by \$200,000. In other words, assuming a subscription rate of 50 percent, the \$200,000 threshold for materiality would not be reached until United Cable received \$40 per month from each subscriber.

Based on the information you have provided, it is not reasonably foreseeable that the additional 839 homes, if approved, would generate \$200,000 annualized gross revenues for United Cable. You have stated that United Cable's average monthly revenue per home is substantially less than \$40. That statement appears reasonable based on the information that the most popular basic rate is \$7.95 per month, and the average subscriber selects two premium services at \$7.95 per month for each premium service, for gross monthly revenues of \$23.85 per home. Therefore, you may participate in the Alameda Planning Board's decision concerning the rezoning of the two parcels of property.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure